

S/N 09/831,971

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	VAN SAARLOOS et al.	Docket No.:	8257.17USWO
Serial No.:	09/831,971	Filed:	May 16, 2001
Int'l Appln No.:	PCT/AU99/01024	Int'l Filing Date:	November 18, 1999
Title:	LIMITED COHERENCE STEREO OPHTHALMOSCOPE		

CERTIFICATE UNDER 37 CFR 1.10

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By: 

Name: \_\_\_\_\_

**REQUEST FOR RECONSIDERATION OF**  
**PETITION UNDER 37 C.F.R. §1.47(a)**

Assistant Commissioner for Patents  
Box PCT  
**Attn: PCT Legal Office**  
Washington, D.C. 20231

Dear Sir:

Applicants respectfully request reconsideration of the Decision On Petition Under 37 CFR 1.47(a) mailed May 17, 2002, in which Applicant's petition was dismissed.

The decision indicates that the Butler declaration was insufficient because Ms. Butler did not actually send the June 5, 2001 letter to Dr. Van Saarloos, and that the June 5, 2001 letter does not mention the application papers.

Enclosed herewith is a declaration entitled "STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR (37 C.F.R. §1.47(b))", which is signed by Nerida Aitken (hereinafter the "Aitken declaration"). Applicants note that the Aitken declaration mistakenly references 37 CFR 1.47(b). The Aitken declaration should instead be treated under 37 CFR 1.47(a).

As indicated in paragraphs 1 and 2 of the Aitken declaration, Ms. Aitken is employed by the firm Clayton Utz which has been representing the assignee in an ongoing dispute with Dr. Van Saarloos. Ms. Utz states that the individual, Christopher Edwards, who personally sent the

June 5, 2001 letter to Dr. Van Saarloos is no longer employed by Clayton Utz (paragraph 3 of the Aitken declaration). However, Ms. Aitken also states that, upon her review of their files, the application papers, including the specification, claims and drawings were sent to Dr. Van Saarloos with the June 5, 2001 letter (paragraph 3 of the Aitken declaration; Exhibit NA-1).

The Aitken declaration further states that a note in the file dated July 5, 2001 concerning a conference involving the disputing parties indicates that the lawyer for Dr. Van Saarloos requested that revised papers be sent to him (paragraph 4 of the Aitken declaration; Exhibit NA-2). The revised papers were sent to Dr. Van Saarloos' lawyer on July 16, 2001 (paragraph 6 of the Aitken declaration; Exhibits NA-3 and NA-4). At the time of signing the Aitken declaration, Dr. Van Saarloos had yet to sign the documents and that the dispute had not yet been resolved (paragraph 7 of the Aitken declaration).

Further, as was indicated on the Butler declaration filed on December 21, 2001, the representative of Dr. Van Saarloos stated that secondary matters, such as execution of the forms for the present application, would be left until the primary dispute is resolved (paragraph 7 of the Butler declaration).

The statement in paragraph 3 of the Aitken declaration demonstrates that a copy of the application papers were presented to Dr. Van Saarloos or his representatives for signature in the June 5, 2001 letter. The person who sent that letter is no longer employed by Clayton Utz. However, Ms. Aitken, as an employee of Clayton Utz and based upon her personal review of the file, has stated that the applications papers did accompany the June 5, 2001 letter. As the person who actually sent the June 5, 2001 is no longer employed by Clayton Utz, Applicants respectfully request that this statement by Ms. Aitken be accepted as sufficient evidence that the application papers did accompany the June 5, 2001 letter.

Further, as stated in the previously filed Butler declaration, Dr. Van Saarloos's representative has stated that secondary matters, such as execution of the forms for the present application, would be left until the dispute has been resolved. Because the dispute has yet to be resolved, Applicants respectfully submit that this statement by the representative of Dr. Van Saarloos should be construed as an express refusal to execute the Combined Declaration and Power of Attorney.

The statement of the last known address of Dr. Van Saarloos, and the declaration by the remaining inventor, Fred Reinholz, were submitted with the petition papers on December 21, 2001.

Applicants respectfully request that a Notification of Acceptance be issued for the above-referenced matter.

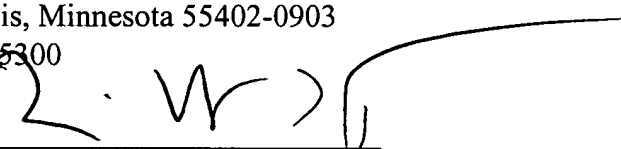
No additional petition fee is believed to be due. The Commissioner is hereby authorized to charge any fee that may be necessary in consideration of this petition to Merchant & Gould deposit account no. 13-2725.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' primary attorney-of record, Brian H. Batzli (Reg. No. 32,960), at 612.336.4755.

Respectfully submitted,  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Dated: November 15, 2002

By

  
\_\_\_\_\_  
Brian H. Batzli  
Reg. No. 32,960

BHB/JAL